

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

* * * * * C.A. NO. 00-105L

YARON UNGAR, by and through
the Administrator of his
Estate, David Strachman,
et al

VS.

MAY 5, 2005
11:00 A.M.

THE PALESTINIAN LIBERATION
ORGANIZATION, et al

* * * * * PROVIDENCE, RI

BEFORE THE HONORABLE RONALD R. LAGUEUX,
SENIOR DISTRICT JUDGE
(Motion for Preliminary Injunction)

APPEARANCES:

FOR THE PLAINTIFFS: DAVID J. STRACHMAN, ESQ.
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FOR THE DEFENDANTS: DEMING E. SHERMAN, ESQ.
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U.S. DISTRICT COURT
DISTRICT OF RHODE ISLAND
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ORIGINAL

1 5 MAY 2005 -- 11:00 A.M.

2 THE COURT: Good morning, everyone. The matter
3 before the Court is Civil Action 2000-105L, Estate of
4 Yaron Ungar, et al, versus the Palestinian Authority,
5 et al.

6 The matter is here on a motion by Plaintiffs for
7 a preliminary injunction, the Court having previously
8 issued a Temporary Restraining Order.

9 Will anyone interested in this matter please
10 identify him or herself for the record.

11 MR. STRACHMAN: David Strachman for the
12 Plaintiffs.

13 MR. CLARK: Ramsey Clark for Palestinian
14 Authority, et al.

15 MR. SHERMAN: Deming Sherman for the same
16 parties.

17 THE COURT: Anybody else?

18 MR. MARCACCIO: Yes, your Honor. Raymond
19 Marcaccio for Brandywine Asset Management, which had
20 been served with a subpoena and also notice of the
21 restraining order.

22 MS. PELCZARSKI: Karen Pelczarski, your Honor,
23 same reasons why I'm here on behalf of Wachovia
24 Corporation.

25 THE COURT: All right. Anybody else? All

1 right. Well, as I've indicated, the matter is here on
2 preliminary injunction. Other papers have been filed
3 and various subpoenas, but I don't know the relevance
4 to this matter. Do you want to explain what you want
5 to accomplish, Mr. Strachman?

6 MR. STRACHMAN: Yes, your Honor. Thank you. On
7 the 19th we filed a request for an ex-parte Temporary
8 Restraining Order, which was granted, and
9 simultaneously request for preliminary injunction,
10 which was set down for hearing today.

11 The Defendants have not objected to the
12 preliminary injunction. They were served on the 19th
13 with all of our pleadings and have not filed an
14 objection.

15 So I think in light of that, we're sort of
16 cleared a way for the entry of the preliminary
17 injunction based on the information that we provided to
18 the Court along with our motion.

19 We also filed a motion, Judge, I believe the
20 next day, to register the judgment in other federal
21 courts pursuant to 28 U.S.C. 1963; and because the case
22 is still at the First Circuit, a mandate having not yet
23 been sent down because the Defendants have asked for a
24 rehearing, we're in an awkward position whereby we
25 can't register and domesticate the judgment in other

1 federal jurisdictions.

2 And, therefore, we need an order from the Court
3 permitting us to do so so that we may begin collection
4 proceedings in other jurisdictions.

5 THE COURT: Well, the problem is that the
6 judgment is not final at this moment in time, and I
7 question whether I have jurisdiction to hear this
8 matter at all because it's still in the Court of
9 Appeals and I haven't received a mandate from the Court
10 of Appeals. I don't even have the papers. They
11 haven't been sent back.

12 MR. STRACHMAN: The Court has jurisdiction over
13 the judgment even though the case is on appeal.

14 THE COURT: Well, I issued a judgment, but it's
15 not final, that's for sure. The Court of Appeals
16 affirmed me, but there is pending a possibility of a
17 rehearing, an in banc hearing and the possibility of a
18 writ of certiorari in the United States Supreme Court.
19 So the judgment is far from being final at this moment.

20 MR. STRACHMAN: The statute permits the entry of
21 a final judgment -- strike that. The statute permits
22 the registration of a judgment even when there has not
23 been a determination on appeal, and the cases that I've
24 cited in our memo so indicate.

25 In other words, even before this stage, this

1 Court had authority to enter an order allowing the
2 Plaintiffs to register the final judgment so as to
3 protect the judgment.

4 THE COURT: Well, it isn't final.

5 MR. STRACHMAN: The judgment to protect their
6 interest, and that occurred in numerous cases that
7 we've cited in our memo, in other words, prior to this
8 stage, and all the more so now where we have a very
9 clear determination from the First Circuit upholding
10 the judgment, upholding all of the prior decisions with
11 respect to all of the claims, et cetera, that were made
12 by the Defendants repeatedly.

13 And I think it would work a tremendous injustice
14 to allow this sort of continued pattern of rehearings,
15 requests for rehearings and new motions on the same
16 issues to delay the Plaintiffs from perfecting their
17 collection activities, especially when, as we've shown
18 in the motion for preliminary injunction, these assets
19 are depleting; that approximately a third of the
20 Palestinian Authority's dedicated investment assets
21 have been depleted in the last several months, that
22 there are plans for it to do more, as we
23 understand.

24 Virtually on a weekly basis there are articles
25 in the paper about transfer of different assets; and I

1 think if we don't take these actions, if we don't have
2 the preliminary injunction and we don't have the
3 ability to then move into the other jurisdictions, I
4 think it calls into question very significantly the
5 ability of the Plaintiffs to collect in the United
6 States.

7 We have no doubt that once the First Circuit
8 files -- makes a ruling on this motion for rehearing,
9 we know there will be another motion for rehearing, and
10 that's been a pattern here. We've been waiting five
11 years to get to this point and after repeated steps,
12 repeated delays to put up roadblocks.

13 So I would urge the Court to enter the
14 preliminary injunction. There's no objection that has
15 been filed; and I spoke to counsel yesterday, was
16 informed that they were not filing -- making any filing
17 today, an objection to either of the two motions, and I
18 think that justice cries out for these steps now.

19 THE COURT: What's the purpose of these
20 subpoenas that you served?

21 MR. STRACHMAN: The subpoenas are to uncover
22 assets, and we have a series of subpoenas that were
23 served that we have various sort of responses from.

24 One was to Ernst & Young. Ernst & Young
25 performed a diagnosis or an analysis, if you will, of

1 the PA assets. That was accompanied with the
2 materials -- they were mentioned in the documents that
3 we filed from the World Bank and from the Democracy
4 Foundation and from Standard & Poor's where they did an
5 analysis of the PA assets for the purpose of
6 standardizing and creating transparency in their
7 assets.

8 They have indicated in a fax I received this
9 morning that they can't find any assets; and what I'd
10 like to do is communicate back to them and point them
11 even further to where they need to look and have that
12 returnable, if possible, have that returnable to my
13 office maybe next Wednesday so that we don't have to
14 take up the Court's time.

15 Similarly, we sent a subpoena to Raymond James,
16 and we've had no response from them, although we had
17 communications with Raymond James when we sent a copy
18 of the previous restraining order.

19 Standard & Poor's, your Honor, who did the
20 diagnosis of the PA assets, and we provided that
21 diagnosis or analysis for the -- in our motion, they
22 have indicated that they have documents, they know
23 where they are, we spoke to their counsel, and they
24 simply need a little more time. And we've been
25 speaking with them for the last couple of days. So I

1 would ask that that subpoena also be returnable next
2 week.

3 Blackwatch Brokerage, your Honor, we did receive
4 communication with and received some documents from,
5 and they are searching to determine whether that
6 response is exhaustive.

7 And Wachovia, I believe, is represented here by
8 my sister. I received basically a generic type of
9 objection from them I believe yesterday, and
10 Ms. Pelczarski has indicated that -- I think she
11 indicated that perhaps we could, you know, communicate
12 further as to how to get the information and arrange
13 for the transfer of that information.

14 These subpoenas are vital because we have
15 literally searched hundreds of banks all over the
16 country. We've sent the restraining order to several
17 hundred institutions. Many of the institutions are
18 pointing us in different directions, and they're all
19 sort of passing the ball.

20 We also need the subpoenas, Judge, because
21 earlier in April we sent a deposition notice to both
22 the main Defendants asking them to provide an
23 individual either in New York, Rhode Island,
24 Washington, somewhere on the East Coast, who would be
25 able to describe the PA assets for us.

1 In response, on April 18th, April 19th, excuse
2 me, I received a letter from Mr. Clark indicating to me
3 that he communicated with Mr. Al-Kidwa and there's no
4 one here who can give us information, et cetera,
5 et cetera. We may have to go to Ramallah to get some
6 of the information about the tens of millions of
7 dollars in assets that they have in the United States.

8 So being stymied by the Plaintiffs (sic), the
9 direct route to the individual brokerage houses and
10 financial institutions is all the more important.

11 THE COURT: All right.

12 MR. STRACHMAN: Thank you.

13 THE COURT: I'll hear first from the Defendants,
14 and then I'll hear from anyone here on behalf of
15 companies that were subpoenaed.

16 MR. CLARK: Thank you, your Honor. The
17 Defendants have made no formal objection, made no
18 formal entry into the substantive parts of the case;
19 but I'd like to make a few observations.

20 The claims that there's some risk of the
21 property being taken out of the country seem
22 unreasonable when you think of the circumstances. The
23 judgment was entered by this Court 10 months ago. The
24 judgment had been entered by the magistrate judge much
25 earlier than that, his recommendation, so you could

1 foresee the problem.

2 The newspaper article they rely on that claims
3 that assets are being liquidated is from January 2004,
4 I think. The only current one that they've cited in
5 their materials that involves liquidation of assets is
6 in Tunisia and Algeria.

7 So the idea that the Palestinian interest would
8 remove their assets at this time, if there are any
9 here, which I don't know, seems unlikely; and at this
10 late date, the urgency of it seems -- the claims of
11 urgency seem fictitious.

12 There is one problem that has arisen for the
13 operation of the offices Palestine has here. It has an
14 office in New York that is a permanent mission,
15 observer mission of Palestine to the United Nations,
16 and it's protected under the Headquarters Agreement,
17 which is a treaty between the United States and the
18 United Nations and its operations and functions.

19 As far as I know, they've had no problem with
20 paying their ordinary expenses, which were excepted
21 from the restraining order by your Honor. I rather
22 think that's probably because the bank there is the
23 bank for the UN members, and it deals with these
24 problems and understands them and knows how to do it.

25 However, the Palestine office in Washington,

1 which we had hoped the lawyer from -- that represents
2 that office would be here, but he was unable to come,
3 he thought yesterday he could, and I'm not really
4 familiar with it, but I'm quite confident that it is a
5 foreign mission under the Foreign Missions Act and is
6 protected to that extent. And your Honor exempted, as
7 it did in the case of the UN mission, ordinary expenses
8 of the office.

9 But the bank -- and I haven't had any
10 negotiations with the bank, but according to the lawyer
11 there and according to personnel in the office there,
12 it has not yet approved checks for salaries and checks
13 for rent and checks for health insurance and checks for
14 transportation, which are major items of expense there.
15 We need to try to protect the functioning of that
16 office from impairment by the bank not honoring that.

17 I think Wachovia is represented here. I hope
18 they'll be able to address the issue of payment of the
19 ordinary expenses of these two missions.

20 Unless there's some questions -- and I should
21 say that the person who served as ambassador or
22 representative for Palestine at the United Nations for
23 many years has been essentially out of the country
24 since December; and within the last month or so, he's
25 been appointed Foreign Secretary for the Palestine

1 Authority.

2 The office in New York has no authority and
3 no -- they transmit things. We sent, for instance,
4 your restraining order and all of the related documents
5 to them immediately and asked them to transmit them
6 immediately to Palestine, but we've been extremely
7 handicapped in functioning because there's just no one
8 here to deal with and there's no one there that we know
9 of that we can deal with except former Ambassador
10 Al-Kidwa, who is now bearing the burden of Foreign
11 Secretary.

12 Unless your Honor has some questions, I thank
13 you.

14 THE COURT: Do you take a position on the motion
15 to register this judgment in other federal courts?

16 MR. CLARK: Well, my observation would be it's,
17 first, premature and unnecessary; but second, they
18 filed a -- the mandate hasn't returned, and there is a
19 question of jurisdiction in my mind; but I will leave
20 that to your decision. We don't participate.

21 We don't know why there's this sudden rush when
22 if there were -- I mean, we all know what people who
23 try to hide money do, they hide money; and if they had
24 any intention of taking assets out of the United
25 States, I think they would have done it long before

1 now.

2 THE COURT: All right.

3 MR. CLARK: Thank you, sir.

4 MR. STRACHMAN: Your Honor, can I address one
5 point?

6 THE COURT: Yes.

7 MR. STRACHMAN: 28 U.S.C. 1963 says that the
8 judgment can be domesticated in other jurisdictions
9 when the issuing Court finds that there's just cause,
10 and that just cause has been determined to mean when
11 there are -- there's a substantial risk of the property
12 being moved such that the judgment won't be satisfied.

13 And we have cited in our brief several cases
14 that speak directly to this point, and I'd also remind
15 the Court that it was approximately six months ago this
16 Court ordered the Defendants to submit a \$50 million
17 bond staying our collection activities.

18 So having failed to do so, we were cleared a way
19 procedurally while the case was on appeal upon their
20 failure to submit that bond, and I believe that was in
21 September. So for the last six months, we've held off
22 for a variety of reasons; and when the Court issued
23 that ruling, it was very clear that absent them posting
24 that bond, I think the Court gave them a few extra days
25 to do so, that we would be cleared a way at that time

1 to begin the collection proceedings.

2 There has been no representation throughout this
3 litigation that there are any assets in Rhode Island.
4 So the only way we'd move to collect is outside of this
5 jurisdiction, and that's why we need to domesticate the
6 judgment in the other federal courts. Thank you.

7 THE COURT: All right. Does anybody else wish
8 to be heard?

9 MS. PELCZARSKI: Yes, your Honor. Your Honor,
10 Karen Pelczarski for Wachovia. We have no objection to
11 anything here, obviously, but a very important
12 interest.

13 There's some confusion. Wachovia has an account
14 that, as I understand it right now, has only about
15 \$200,000 of money from one of the Defendant entities.
16 Two issues of confusion that if any orders enter today
17 we would hope to be clarified.

18 Number one, there's a -- it all revolves around
19 a provision in the Temporary Restraining Order that was
20 entered by this Court that permits the PLO to have
21 expenses paid. And two days ago, Wachovia received a
22 bill for about \$60,000 for expenses.

23 Wachovia -- I should mention, too, there's a
24 New York State Temporary Restraining Order that also
25 entered, and that order does not provide for the

1 payment of expenses. So that's number one confusion
2 that's putting Wachovia in a difficult position.

3 The second one is, it seems to me that either
4 Wachovia should be restrained entirely or given more
5 guidance on what those expenses should be because
6 they're being put in a very difficult position of
7 looking at a simple bill and making a decision as to
8 whether they should pay it or not.

9 So I would ask that this Court give Wachovia
10 some more guidance if another order is going to be
11 entered or if the TRO is going to be confirmed in any
12 way.

13 THE COURT: Well, I can't speak for the state
14 courts in New York. I don't know anything about that
15 proceeding. So there's nothing I can do to help that
16 situation.

17 I've exempted in the Temporary Restraining
18 Order, and I intend to exempt in the preliminary
19 injunction, that issue, the payment of ordinary
20 expenses for those two offices. How that affects
21 Wachovia, I don't know.

22 MS. PELCZARSKI: Is there a place where Wachovia
23 can go to get more information as to what expenses are
24 valid or not? That's our problem.

25 THE COURT: Well, you'd better go to the state

1 court that issued that restraining order in New York,
2 it would seem to me. All I can do is deal with what I
3 have before me.

4 As I've indicated, I exempted the ordinary
5 expenses from those two offices, the one in New York
6 and the one in Washington; but that's as far as I can
7 deal with it.

8 MS. PELCZARSKI: All right. I would think that
9 Wachovia might be interested in filing some sort of
10 petition for instructions under that scenario, your
11 Honor, because, again, when we get a bill that's --

12 THE COURT: Well, if you want to do that, go
13 ahead. I'm not going to prevent you from doing that.
14 Maybe Mr. Strachman can agree with you on something.

15 MS. PELCZARSKI: Thank you, your Honor. That's
16 all I have.

17 MR. STRACHMAN: I would just add, Judge, if we
18 could find out what these accounts are, this one
19 account and how it's registered, et cetera, find out
20 some more information, perhaps we could work that out;
21 and we would certainly be willing to attempt to do that
22 because we obviously drafted the order attempting to
23 carve out a niche. We need to make sure that that
24 niche is clear and we understand what it is, but we've
25 received no information from anybody about any of these

1 accounts that would help us at least discuss this
2 issue.

3 THE COURT: Well, you'll have to work that out.
4 I can't deal with it at this point. Mr. Marcaccio?

5 MR. MARCACCIO: Thank you, your Honor. Good
6 morning, your Honor. I'm here on behalf of Brandywine
7 Asset Management, Inc.

8 Brandywine was served with a copy of the TRO,
9 the Temporary Restraining Order, on or about April 20th
10 or 21st; and Brandywine is the -- it serves in the
11 capacity as the investment manager for a fund that is
12 titled Palestinian Pension Fund for the State
13 Administrative Employees in the Gaza Strip.

14 I have no knowledge as to whether or not this
15 would even be connected to this cause of action; but
16 out of an abundance of caution, Brandywine has ceased
17 doing any transactions on behalf of that fund as of the
18 date that it received notice.

19 So we're here today not to object to the
20 existence of the restraining order but just to
21 determine whether or not it would continue to apply to
22 us.

23 MR. STRACHMAN: If I could, Judge, Mr. Marcaccio
24 and I spoke a couple of days ago, and we had suggested
25 that if the -- if Brandywine would similarly provide us

1 some information about the account, that maybe we could
2 figure out whether it's subject to the order from at
3 least our perspective or not.

4 They have indicated that they haven't provided
5 any documents; and I'm wondering, if my brother has any
6 information about that, if the Court would order or
7 suggest that he give us some of that information, we
8 could, you know, start that discussion because we're --
9 you know, we're concerned, and we're concerned about
10 what we believe is \$10 million in this account. It
11 could be up to \$14 million.

12 But we have no confirmation, no bank statements.
13 We have nothing; and if the Court could provide some
14 relief and order Brandywine to give us some of this
15 basic information, I think that would help us to go a
16 long way to working this issue out.

17 MR. MARCACCIO: And just briefly on that, your
18 Honor, I have spoken to Mr. Strachman. I first learned
19 of this on May 3rd when I entered my appearance. I
20 have spoken to counsel for Brandywine in D.C. I
21 understand that as of yesterday they were served with a
22 subpoena seeking certain documents, and the
23 representation I received was that they would compile
24 relevant documents so that Mr. Strachman could learn of
25 this information directly through that process. I

1 think the return date for that subpoena's
2 May 11th or May 13th, one of those two days.

3 Now, I don't know if they'll provide everything
4 that was requested, but they certainly are compiling
5 documents that would be responsive.

6 THE COURT: All right. Well, I'm satisfied that
7 a preliminary injunction should issue in the same terms
8 as the restraining order that was issued by the Court
9 to hold the status quo in this matter until the matter
10 can be finally resolved.

11 There is a reasonable likelihood that the
12 judgment issued by this Court will become final in due
13 time in view of the decision of the First Circuit Court
14 of Appeals affirming this Court's decision and the
15 entry of that judgment.

16 And, therefore, I will issue the preliminary
17 injunction in the same terms as the restraining order
18 provides. Any disputes or any questions that arise
19 under that preliminary injunction by various parties or
20 by firms that have been subpoenaed, if not worked out
21 between counsel, an appropriate motion or petition can
22 be filed with this Court and the Court will try to
23 resolve those issues; but the Court is not clairvoyant
24 and cannot fully comprehend at this time what those
25 issues might be.

1 Also, Plaintiffs' motion for an order to
2 immediately register the judgment in other federal
3 district courts is granted. Plaintiffs' counsel has
4 made a good point that the supersedeas bond was not
5 filed in this case and, therefore, Plaintiffs'
6 collection activities can be pursued at this time, even
7 though the judgment isn't final yet.

8 So present an order on those two matters,
9 Mr. Strachman.

10 MR. STRACHMAN: I'd like to present them now if
11 I could, Judge.

12 THE COURT: All right.

13 MR. STRACHMAN: We're concerned about the
14 injunction, if I may approach, because by its terms it
15 explicitly terminated today.

16 (Pause)

17 THE COURT: Why do you put a termination date on
18 the injunction as July 5?

19 MR. STRACHMAN: We initially asked I think for
20 60 days, Judge, but I would be happy to have it extend
21 longer. We initially wanted to get an order so that we
22 could domesticate, but it would be more helpful to not
23 have it terminate.

24 THE COURT: Well, what do you want?

25 MR. STRACHMAN: I guess until we're done, Judge.

1 I mean, I guess if we could just have it until
2 otherwise ordered or otherwise terminated.

3 THE COURT: All right. I will amend it. This
4 injunction will remain in force until further order of
5 the Court.

6 MR. STRACHMAN: Thank you.

7 THE COURT: All right. That's the injunction
8 order and the order granting the Plaintiffs the right
9 to register the judgment.

10 MR. STRACHMAN: Thank you, your Honor. May I
11 also ask for an order that the five subpoenas that I
12 mentioned be returnable, instead of burdening the
13 Court, maybe to my office next Wednesday, 2:00, so that
14 we could -- obviously, we don't need to continue this
15 hearing, per se; but we have no substantive response to
16 any of these subpoenas, and Raymond James hasn't even
17 appeared or communicated directly with us about the
18 subpoena.

19 THE COURT: Well, I don't think I have the
20 authority to have a subpoena returned to a lawyer's
21 office. It has to be returned to this Court. So what
22 do you want to do? Do you want me to set another date?

23 MR. STRACHMAN: Yeah, we would, Judge, if we
24 could, and as early as possible so that we can --

25 THE COURT: What date do you want?

1 MR. STRACHMAN: Next Wednesday, Judge, is that
2 possible, say in the afternoon?

3 THE COURT: Two o'clock next Wednesday
4 afternoon.

5 MR. STRACHMAN: Thank you, your Honor.

6 THE COURT: So present an order to that effect.

7 MR. STRACHMAN: I will. Thank you very much.

8 THE COURT: All right. Anything else we should
9 discuss?

10 MR. STRACHMAN: Just that I'd like to sometime,
11 if it's possible, get the certified copies of the
12 judgment entered so we can --

13 THE COURT: Well, that will be handled in the
14 Clerk's Office.

15 MR. STRACHMAN: Thank you, Judge.

16 THE COURT: All right. Anything else from
17 anyone? All right. We'll take a recess.

18 (Adjourned)

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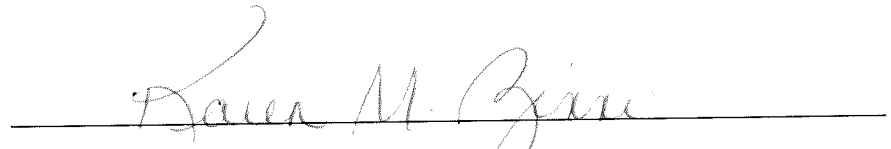
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C E R T I F I C A T I O N

I, Karen M. Zinni, RPR-RMR-CRR, do hereby
certify that the foregoing pages are a true and
accurate transcription of my stenographic notes in the
above-entitled case.


Karen M. Zinni, RPR-RMR-CRR


Date

KAREN M. ZINNI, RPR-RMR-CRR